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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 655

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON, PETITIONERS

v.

MAURICE J. TOBIN, SECRETARY OF LABOR, AND EMPLOYEES COMPENSATION APPEALS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 3A) is not reported. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 20) is reported at 187 F. 2d 514.

JURISDICTION

The judgment of the Court of Appeals was entered on January 4, 1951 (R. 22). The petition

for a writ of certiorari was filed on April 3, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district courts have jurisdiction to review an administrative denial of a death benefit claim under the Federal Employees' Compensation Act despite the Act's express prohibition of review "by any court by mandamus or otherwise."

STATUTE INVOLVED

Section 42 of the Federal Employees' Compensation Act, as amended (59 Stat. 503, 504, 5 U.S.C. 793), provides in pertinent part:

> The action of the Commission or its designees in allowing or denying any payment under this Act shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise, and credit shall be allowed in the accounts of any certifying or disbursing officer for payments in accordance with such action.

STATEMENT

This case arises out of a claim by petitioner Aurea Calderon for Federal Employees' Compenstation Act benefits for the death of Maximo Calderon.

In 1925, Maximo and Celia Calderon entered into a common law marriage (R. 5A). They came to

New York in October, 1926, resided together there as man and wife, and the birth of their child was publicized in notices of announcement in which they held themselves out as married (R. 5A, 7A). Subsequently, Maximo began cohabiting with petitioner Aurea, by whom he had a child in August, 1928 (R. 5A). This cohabitation continued until some time between 1929 and 1931, another child being born in September, 1929. In May 1942, Maximo participated in a marriage ceremony with a third woman, Adele (R. 5A). Maximo lived with Adele until November 12, 1944, when he died as a result of injuries sustained in the course of his employment at the United States Navy Yard in Brooklyn, New York (R. 5A, 11A).

Celia, Adele and petitioner Aurea, all claiming to be Maximo's lawful widow, filed claims with the United States Employees' Compensation Commission for death benefits under the Federal Employees' Compensation Act (R. 5A). The Commission, on January 31, 1946, determined that Celia, rather than Aurea or Adele, was Maximo's lawful widow (R. 5A). Aurea then asked the Commission to reconsider its decision. She relied on the fact that a New York Surrogate's Court had issued to her letters of administration "as the lawfully wedded wife of the deceased, Maximo Calderon" and had denied Adele's petition for revocation of these letters (R. 6A, 14A-16A). Celia was not a party to the Surrogate's Court proceeding (Pet. 5; R.

6A). On June 20, 1946, the Commission reviewed and adhered to its earlier decision (R. 6A).

Effective July 16, 1946, the Bureau of Employees' Compensation was established in the Federal Security Agency to take over the functions of the Employees' Compensation Commission (60 Stat. 1095). Aurea applied to that Bureau for reconsideration of the former Commission's determination (R. 6A). On June 12, 1947, the Bureau found that Celia was not a party to the Surrogate's Court proceeding; that she had not been served with process nor appeared in that litigation; and that no issue was raised in that proceeding with respect to Celia's status as Maximo's lawful widow (R. 6A). The Bureau accordingly again ruled that Aurea was not Maximo's lawful widow and that the Surrogate's decree "is not binding upon the Bureau in respect to the Bureau's determination upon the status of Celia" (R. 6A). The Employees' Compensation Appeal Board affirmed this ruling on February 13, 1948 (R. 4A-10A; 17A).

About two months later, on April 15, 1948, petitioner Aurea, again claiming to be Maximo's lawful widow, filed a "Complaint for a Declaratory Judgment and an Injunction" against the Federal Security Administrator, the Federal Security Agency[1] and the Employees' Compensation

[1] Subsequent to the transfer of the Bureau of Employees' Compensation from the Federal Security Agency to the Department of Labor (15 F.R. 3178) and while the case was pending in the Court of Appeals, Secretary of Labor Tobin, on

Appeals Board (R. 11A). The complaint alleged that defendants' failure to recognize Aurea as Maximo's lawful widow did not give proper effect to the Surrogate's decree and that that failure violated the Full Faith and Credit Clause of the Constitution (R. 13A). An injunction was demanded to restrain the defendants from denying Federal Employees' Compensation Act benefits to petitioner Aurea upon the ground that she was not Maximo's lawful widow (R. 13A). In addition, the complaint demanded judgment declaring that the Surrogate's judgment was binding upon each of the defendants; that petitioner Aurea was Maximo's lawful widow and that her children, petitioners Ruby and James, were the lawful issue of the marriage between Maximo and Aurea (R. 13A). The district court dismissed the complaint on the ground that it had no jurisdiction of the subject matter and that the law expressly precluded such an action (R. 2A). The Court of Appeals affirmed, ruling that Section 42 of the Federal Employees' Compensation Act, *supra*, p. 2, precluded judicial review and that the "full faith and credit clause of the Constitution is not involved" (R. 21).

ARGUMENT

1. The court below properly rejected petitioners' contention that the district courts have jurisdiction to review the instant claim, which is essen-

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of the present respondents, was named as appellee in lieu of the Federal Security Agency and the Federal Security Administrator.

tially one for Federal Employees' Compensation Act death benefits.[2] Section 42 of the Federal Employees' Compensation Act, *supra,* p. 2, expressly denies the courts any power to take jurisdiction of such an action. It provides that the Commission's action in allowing or denying any payment under the Act shall be final and conclusive on all questions of law and fact, and that no other official or court of the United States shall have jurisdiction to review such decision by mandamus or otherwise.[3] Such a provision precluding judicial review is clearly constitutional since the allowance of employees' death benefits constitutes a gratuity which Congress may grant upon any conditions it sees fit. The Act, this Court has stated, "is essentially an act of justice or of grace on the part of the United States" and therefore "does not contemplate or provide for suits against the Government." *Dahn* v. *Davis,* 258 U.S. 421, 431. And, as the court below pointed out, Congress could, as it did here, "preclude judicial review of the selection of the objects of its bounty" (R. 21). That the United States may create rights in individuals against itself and provide only an ad-

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[2] While petitioners' complaint for declaratory judgment also seeks an adjudication of the status of Ruby and James Calderon, its essential purpose was to obtain judicial reversal of the Board's determination that petitioner Aurea was not Maximo's lawful widow and hence not entitled to death benefits under the Act.

[3] This express prohibition of judicial review makes inapplicable the judicial review provisions of the Administrative Procedure Act (Section 10, 60 Stat. 237, 243) and accounts for petitioners' inability to rely on those provisions here.

ministrative remedy is no longer open to question. *United States* v. *Babcock,* 250 U.S. 328, 331; *Tutun* v. *United States,* 270 U.S. 568, 576; *Lynch* v. *United States,* 292 U.S. 571, 581-582, 587; *Barnett* v. *Hines,* 105 F. 2d 96 (C.A.D.C.), certiorari denied, 308 U.S. 573; *Van Horne* v. *Hines,* 122 F. 2d 207 (C.A.D.C.), certiorari denied, 314 U.S. 689.

No different result is required because of the fact that the employee's death in 1944 antedated the July 28, 1945, amendment to Section 42 which added the non-judicial review provisions set forth above. Even before that amendment, other terms of the Act made it clear that Congress has vested the Commission with full power to pass upon and finally to determine all questions arising under the Federal Employees' Compensation Act, without affording claimants any recourse to judicial review. Section 36 of the Federal Employees' Compensation Act, 39 Stat. 749, 5 U.S.C. 786; *Dahn* v. *Davis, supra,* p. 431; *White* v. *T.V.A.,* 58 F. Supp. 776 (E.D. Tenn.); *Dierssen* v. *Woolever,* 3 F.R.D. 342 (D. Conn.); see 33 Op. Atty. Gen. 476.

2. Petitioners' attempt to avoid these express jurisdictional limitations by urging that their constitutional rights to the protection of the Full Faith and Credit Clause were violated when the Commission refused to substitute the Surrogate's finding for its independent determination that Celia, rather than Aurea, was Maximo's lawful widow. But in the administration of federal laws, it is obvious that the United States can not be bound by

determinations of state courts in proceedings to which the United States was not a party, especially where, as here, Congress has required the determination to be made by the federal administrative officials appointed for that purpose. See *Ramsey* v. *United States,* 61 F. 2d 444, 445 (C.A. 5). The instant case, therefore, as observed by the court below, does not present any question concerning the Full Faith and Credit Clause (R. 21).

Even if the Clause were involved, it is well-settled, with respect to judgments at least, that the Clause has no greater effect than to make a judgment of a state court *res judicata* in sister states to the same extent that it is *res judicata* in the first state. *Magnolia Petroleum Company* v. *Hunt,* 320 U.S. 430, 439. The Clause simply makes a matter which has been adjudicated in one state *res judicata* to the same extent in every other state. Here, it is apparent that the New York Surrogate's Court proceeding granting Aurea letters of administration could not have been *res judicata* in New York as to the Commission or Celia, who were never made parties to that proceeding. Under the pertinent New York statute, a Surrogate's decree is conclusive only as to those persons "of whom jurisdiction was obtained." Section 80, New York Surrogate's Court Act. Therefore, in New York, a decree granting letters of administration is not conclusive as to those who were not parties to the proceedings leading to the

granting of the decree. *Opton* v. *Guaranty Trust Company,* 194 Misc. 261. This court has invoked the same rule in order to deny any *res judicata* effect as to those who are not parties to proceedings granting letters of administration. *Blackburne* v. *Crawford,* 3 Wall. 190; *Kearney* v. *Denn,* 15 Wall. 51, 57.

Nor does petitioners' characterization of the Surrogate's Court proceedings as an *in rem* action confer upon it any broader *res judicata* effect. This very contention, as pointed out by the New York court in the *Opton* case, was rejected in *Scott* v. *McNeal,* 154 U.S. 34, 46, where this Court stated that even a judgment in proceedings "strictly *in rem* binds only those who could have made themselves parties to the proceedings, and who had notice, either actually, or by the thing condemned being first seized into the custody of the court." We submit, therefore, that since the Surrogate's decree would not be *res judicata* in New York as against the Commission or any one else not a party to the Surrogate's Court proceedings, it cannot be availed of as against the Commission under the Full Faith and Credit Clause.

CONCLUSION

The decision of the court below is clearly correct. There exists no conflict, and further review is not warranted. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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